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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 476

OLLIVER PEET WILLIAMS, State Treasurer, State of Oklahoma; A. F. SHAW, State Auditor, State of Oklahoma; J. D. DUNN, LAWSON LANSDOWN and MINOR CONNING, comprising the Oklahoma Tax Commission, State of Oklahoma; and HAROLD PUGH, MAYNE M. EARNS and FRANK BRYAN, comprising the State Election Board, State of Oklahoma,

Appellants,

VERSUS

HARRY R. MOSS,
Appellee.

MOTION TO DISMISS

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October, 1963.

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In the
Supreme Court of the United States
OCTOBER TERM, 1963

No. 476

COWBOY PINK WILLIAMS, State Treasurer, State of Oklahoma; A. F. SHAW, State Auditor, State of Oklahoma; J. D. DUNN, LAWTON LEININGER and MIKE CONNERS, comprising the Oklahoma Tax Commission, State of Oklahoma; and HASKELL PUGH, MATHER M. EAKES and FRANK RENEAU, comprising the State Election Board, State of Oklahoma,

Appellants,

VERSUS

HARRY R. MOSS,
Appellee.

MOTION TO DISMISS

Comes now the Appellee (Plaintiff below) moving the Court to dismiss this Appeal and for cause he says:

THAT a complete and certified copy of the pleadings hereinafter referred to are each made an Appendix and attached to the Motion to Dismiss of the Council of Democratic Neighborhood Clubs and by this reference the same are made part hereof.

THAT the Attorney General of Oklahoma as counsel for the Appellants herein presents the following as proper parties to appeal:

(1) *William A. Burkhart,* State Treasurer for the State of Oklahoma and predecessor in office of the said Cowboy Pink Williams, filed an Answer herein, which has never been repudiated by the said Cowboy Pink Williams and by which he is bound, presented the following prayer:

> "WHEREFORE, this defendant prays that the Complaint of the plaintiff be denied insofar as it seeks injunctive relief against this defendant, restraining him from paying valid state warrants, and further prays that the Court enter such appropriate orders as will effect a re-apportionment of the Legislature in such a manner that it will not be in violation of the Fourteenth Amendment of the Constitution of the United States."

(2) *Andy Anderson,* State Auditor of the State of Oklahoma and predecessor in office to A. J. Shaw, filed in his official capacity an Answer, which has never been repudiated by the said A. J. Shaw (and by which as state officer he is bound) the same tendering the following allegations:

> "A. Defendants admit that this court has jurisdiction in this action.
>
> "B. Defendants deny that plaintiff is entitled to the relief prayed for against them in his complaint and pertinent amendments thereof; and in this connection allege that defendant's functions and duties, insofar as this case is concerned, are purely ministerial, and are not affected by the fact that the legislature of Okla-

homa may not be, as alleged by plaintiff, apportioned in the manner prescribed by Sections 9 to 16, Article 5, of the Oklahoma Constitution."

THAT said pleading of the said Andy Anderson was signed by Mac Q. Williamson, predecessor in office to the present Attorney General.

(3) In said Answer of the said Andy Anderson, the members of the *Tax Commission of Oklahoma* (now and then), Appellants joined and were also represented by the said Mac Q. Williamson, predecessor in office to the present Attorney General.

(4) The *State Election Board of the State of Oklahoma*, whose predecessors in office filed an Answer in said suit (by which their successors in office are bound); which said Answer tendered the following prayer:

> "WHEREFORE, having fully answered, these Defendants pray that this Court enter such Judgment and Order as is just and equitable under the circumstances, which Judgment and Order these Defendants shall abide."

THAT so, no party named as Appellant in said No. 476 was aggrieved by the Judgment of the Court and therefore no party so named has any right of appeal.

SID WHITE
445 Commerce Exchange Building
Oklahoma City, Oklahoma

Attorney for Appellee

ARGUMENT AND BRIEF IN SUPPORT OF MOTION TO DISMISS

THAT under the Rules of this Honorable Court and the statutes where they exist, no person except one "aggrieved" by the Judgment has any right of appeal here. *United States* v. *Adamant Co., et al.*, 197 F.2d 1.

THAT the Enabling Act of the State of Oklahoma in its Section 3 provides:

> "The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, and shall not be repugnant to the Constitution of the United States and the principles of the *Declaration of Independence.*"

THAT therefore and in obedience to said provision of its Enabling Act the Constitution of the State of Oklahoma in Section 45 of its Article 25-A reads as follows:

> "Acceptance of the Terms of Enabling Act. Be It Ordained by the Constitutional Convention for the proposed State of Oklahoma, that said Constitutional Convention do, by this ordinance irrevocable, accept the terms and conditions of an Act of the Congress of the the United States, entitled, 'An Act to Enable the People of Oklahoma and the Indian Territory to form a Constitution and State Government and be admitted into the Union on an equal footing with the original states; and to Enable the People of New Mexico and of Arizona to form a Constitution and State Government and be admitted into the Union on an equal footing with the original states,' approved June the sixteenth, Anno Domini, Nineteen Hundred and Six."

THAT so the people of Oklahoma became bound by the Enabling Act and the Constitution of said State to accept the Constitution of the United States (and the Declaration of Independence with its Indictment of the English King for taxing the colonists without representation) as a part and parcel of the philosophy of its government and to in no manner contradict the same.

In his Appendix I the Attorney General attaches the Final Judgment of the Court from which this appeal is attempted and on its page 12 this appears:

> "This brings us to the form of relief which is to be afforded, or more specifically, the form of Order for the remedy. While, as we have seen, the equal protection clause of the Fourteenth Amendment is content with fundamental fairness in the exercise of voting rights, *if apportionment is to be our lot, we should not stop short of the ideal.* Of all the plans for reapportionment which have been urged upon us, as an appropriate remedy, we have been favored with a formula which approaches the ideal, to reapportion the Legislature 'as near as may be' to the equal number of inhabitants' of each district. This plan, known in the proof here as Model C, is submitted by the Bureau of Government Research, of the University of Oklahoma. It represents the judgment of the *Acting Attorney General* of the State, when this matter was previously under consideration for appropriate remedy. It is an embodiment of the best thinking and contribution of the political scientists and statisticians, who have testified in this case, concerning the critical question of discrimination. We adopted it as our guideline in our August 3rd Order. When State Question No. 408, Initiative Petition No. 271, providing for a Commission to reapportion the Legislature, was declared to have

passed, by proclamation of the Governor, the *de facto* Commission, created thereunder, adopted the Model as affording the most effective plan for reapportioning the Legislature, in accordance with the Oklahoma Constitution and the guidelines of our August 3, 1962 Order. We now adopt it as the pattern for Final Judgment of this Court, and in accordance with the following Order of Reapportionment."

Since his predecessor in office has persuaded the Court to its conclusion, it is the height of inconsistency approaching the intolerable for the Attorney General to now assail the Judgment.

It seems to me that this recitation of fact and law should accomplish a dismissal of the appeal.

Very respectfully,

SID WHITE
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Attorney for Appellee

October, 1963.